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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
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10 In Re the Trustee's Sale of the real property
11 of:

12 SAMUEL M. WRIGHT and DIANA L. WRIGHT
13 (the Grantors

14 Case No.: 2:21-cv-00024-MLP

15 **QUALITY LOAN SERVICE
16 CORPORATION OF
17 WASHINGTON'S RESPONSE TO
18 MOTION FOR SUMMARY
19 JUDGMENT**

20 NOTE ON MOTION CALENDAR: July 2,
21 2021

22 COMES NOW, Quality Loan Service Corporation of Washington ("QLS"), making this
23 Reply to the United States' Motion for Summary Judgment noted for hearing on July 2, 2021.

24 **A. QLS Is Entitled to Its Fees and Costs**

25 QLS does not oppose the Unites States' motion generally. However, it does oppose any
26 attempts by the United States to strip it of its duly earned fees and reasonably incurred costs.

27 Under Washington state statute RCW 61.24.080, the order of the disposition of the proceeds
28 of sale is the trustee and its attorneys, the obligation secured by the deed of trust, and then to any
lienholders.

29 Under RCW 61.24.080(3), the trustee is required to deposit any surplus funds with the clerk
30 of the court along with a written notice of deposit. That notice of deposit is required to be mailed to
31 all interested parties. Since this is an interpleader filed with the court, attorneys' fees are accrued in
32 the preparation of the notice. Costs are also incurred for mailing the notice to all required parties.

1 These fees and costs are incurred by the trustee during the execution of its statutorily required
2 obligations under a non-judicial foreclosure sale.

3 Under RCW 61.24.080(1), the trustee is entitled to the “expense of the sale, including
4 reasonable charge by the trustee and by his or her attorney.” Because the depositing of the funds and
5 the requisite notice is required by statute under RCW 61.24.080(3) as part of the non-judicial
6 foreclosure process, a trustee is entitled to those funds under RCW 61.24.080(1). The fact that the
7 deposit process is part of a non-judicial foreclosure is bolstered by the process being included in the
8 Deed of Trust Act, RCW 61.24, which outlines all of the necessary procedures for a non-judicial
9 foreclosure.

10 Under the United States’ argument that a lienholder has priority over even the trustee, the
11 trustee would not even be able to collect its fees for conducting the trustee’s sale itself because the
12 foreclosure was after the IRS liens were created. This is counter to the state’s governing statute.
13 Further, the United States cites *Abex Corp. v. Ski’s Enterprises, Inc.*, 748 F.2d 513, 516-517 (9th Cir.
14 1984) for the proposition that fees and costs could be recovered if they were part of the non-judicial
15 foreclosure. As argued above, by Washington statute, they are.

17 **Conclusion**

18 QLS is entitled to its attorney’s fees and costs by law. The order of disposition of the sale
19 proceeds in Washington are 1) the trustee and its attorney 2) the debtholder and then 3) the
20 lienholders. The United States is only a lienholder and only has priority over other lienholders and
21 the debtor. The United Stats’ Motion should be denied as to its claim for QLS’s lawful and
22 appropriate fees and costs.

23 Dated: June 4, 2021

24 /s/ Warren Lance

25 McCarthy & Holthus, LLP
26 Warren Lance WSBA #51586
27 Attorney for Quality Loan Service
Corporation of Washington

CERTIFICATE OF SERVICE

I certify that on June 4, 2021, I electronically filed the foregoing Response to Motion for Summary Judgment, with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to the following person(s):

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